



MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

130 – FOREIGN NATIONALS – DIPLOMATIC IMMUNITY – RACIAL PROFILING – IMMIGRATION ENFORCEMENT

GENERAL ORDER: 2008-39

ISSUED: August 26, 2008

EFFECTIVE: August 26, 2008

ACTION: Amends General Order 2008-03 (March 25, 2008)

130.00 PURPOSE

The U.S. Department of State requires the assistance of state and local law enforcement authorities in carrying out the treaty obligations of the United States concerning the detention or arrest of foreign nationals and contacts with foreign diplomats in this country. The cooperation of state and local law enforcement authorities is essential to carry out these obligations effectively, and to ensure that Americans arrested or detained abroad obtain the treatment to which they are entitled. These obligations are embodied in both bilateral agreements with specific countries and in the multilateral Vienna Convention on Consular Relations, to which the United States is a party. These treaty obligations are legally binding on all state and local governments.

Note: A recent decision by the United States Court of Appeals has established potential liability to police officers that fail to follow the Vienna Convention on Consular Relations procedures. Accordingly, members of the Department shall pay particular attention to the procedures outlined below when dealing with foreign nationals.

130.05 DEFINITIONS

A. FOREIGN NATIONALS

For the purpose of this procedure, a foreign national is defined as a person owing allegiance to, and entitled to the protection of, another sovereign state; specifically a person who claims the protection of that state, and applies especially to a person living or traveling outside that state. Simply stated, a foreign national is a citizen of another country who is in the United States, either legally or illegally, including both legal permanent resident aliens and temporary visitors.

B. DIPLOMATIC IMMUNITY

Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities. The purpose of this privilege and immunity is not to benefit individuals, but to ensure the efficient and effective performance of their official missions on behalf of their governments. These persons may be members of diplomatic missions,

consular posts, or employees of international organizations or members of national missions to such international organizations. Immunity is simply a legal barrier which precludes U.S. Courts from exercising jurisdiction over cases against persons who enjoy it and in no way releases such persons from the duty, embodied in international law, to respect the laws and regulations of the United States.

C. PERSONAL INVIOABILITY

Personal inviolability is enjoyed to some degree by a majority of foreign diplomatic and consular personnel. This inviolability generally precludes handcuffing, arrest, or detention in any form and forbids U.S. authorities from entering the residences, automobiles, or other property of protected persons. However, in circumstances where public safety is in imminent danger or it is apparent that a grave crime may otherwise be committed, police authorities may intervene to the extent necessary to halt such activity. This naturally includes the power of the police to defend themselves from personal harm.

D. CITIZENSHIP

The term citizenship refers to the country in which a person is a lawful citizen.

E. IMMIGRATION STATUS

Immigration status refers to whether or not a person is in the United States lawfully. A person can be a citizen of another country, but be in the United States lawfully or unlawfully.

130.10 GENERAL PROCEDURES

A. ARRESTED OR DETAINED FOREIGN NATIONALS

For purposes of the following procedures, arrest/detention shall mean whenever a police member requires a person to accompany them to a place of detention.

1. Whenever a police member arrests or detains a person, the police member shall inquire as to that person's citizenship to determine whether or not any consulate notification obligations apply.
2. Whenever a police member arrests or detains a foreign national, he/she shall as soon as practical:
 - a. Notify the shift commander of the place of detention and the citizenship of the person.
 - b. Provide the shift commander with a detailed account of the

circumstances leading to the arrest/detention.

3. Upon learning that a foreign national has been arrested or detained, the shift commander shall as soon as practical:
 - a. Ensure that the detainee is notified (e.g., prior to interrogation) of their right to have their government informed of the arrest/detention.
 - b. Upon being notified that a foreign national has been arrested/detained and either wishes that his/her consulate or embassy be notified, or is a citizen from a country that requires consular notification, the on-duty shift commander shall as soon as practical:

Notify the appropriate foreign consulate or embassy by completing and faxing the completed *Consular Notification of Arrest/ Detention/ Death/ Serious Injury of Foreign Nationals* (Form PD-3E, which is available on the department network) to the appropriate consulate or embassy. (Refer to either the "Consular Notification and Access" Manual - Part Six, published by the U.S. Department of State, or the U.S. Department of State website for updated embassy/consulate addresses and telephone numbers) The PD-3E shall be retained by all districts according to existing schedules.

- c. The on-duty shift commander shall ensure that the foreign national is advised that his/her consulate has been notified and a written record of this notification shall be made in the shift commander's daybook.

Note: In the event the country of origin is not listed in the "Consular Notification and Access manual, or the listed number is incorrect, the notifying member shall contact Washington D.C. directory assistance at **REDACTED** and request the specific country's embassy telephone or fax number. Updated contact phone/fax numbers are also available on the U.S. Department of State website: <http://travel.state.gov>

4. Visitation

Subject to the procedures established in Standard Operating Procedure Section 3/090 – Prisoners, regarding access to detained persons, consular officers have the right to visit their nationals who are in prison, custody, or detention, to converse and correspond with them, and to arrange for their legal representation.

Note: A foreign consular officer should not take such actions on behalf

of such a person if the person being held expressly opposes these actions. In addition, consular officers may not act as attorneys for their nationals.

5. All officers shall be aware that treaty agreements with certain countries (**not** including Mexico) **REQUIRE MANDATORY NOTIFICATION** when their nationals are arrested or detained. In these cases, the foreign national has no choice regarding the notification, and the detaining law enforcement agency **MUST** notify the appropriate consulate or embassy of the situation without delay by following the steps listed above.
6. Questions and/ or guidance regarding the arrest and detention of foreign nationals can be directed to the U.S Consular Affairs Office [REDACTED]

REDACTED

B. DECEASED FOREIGN NATIONALS AND FOREIGN NATIONALS SUFFERING FROM LIFE THREATENING INJURY AND/ OR MEDICAL CONDITIONS.

1. Police members shall notify their shift commander of incidents where a foreign national is deceased or suffering from a life threatening injury and/or medical condition.
2. Upon being notified that a foreign national is deceased or suffering from a life threatening injury and/or medical condition, the shift commander shall notify the appropriate foreign consulate or embassy by completing and faxing the completed *Consular Notification of Arrest/Detention/Death/Serious Injury of Foreign Nationals* (Form PD-3E) to the appropriate consulate or embassy. The PD-3E shall be retained at all districts according to existing schedules.

130.15 DIPLOMATIC IMMUNITY

A. CATEGORIES OF PERSONS ENTITLED TO PRIVILEGES AND IMMUNITIES

1. Members of Diplomatic Missions – Diplomatic missions are traditionally the principal communication link between the country that sends them and the host country. Accordingly, the staffs of diplomatic missions (embassies) are afforded the highest level of privileges and immunities in the host country in order that they may effectively perform their important duties. Members of these missions include:
 - a. Diplomatic Agents—enjoy complete personal inviolability, which means that they may not be handcuffed (except in extraordinary circumstances), arrested, or detained, and neither their property (including vehicles) nor residences may be entered or searched. Diplomatic agents also enjoy complete immunity from the criminal jurisdiction of the host country's courts and thus cannot be prosecuted

no matter how serious the offense unless their immunity is waived by the sending state.

- b. Administrative and Technical Staff – enjoys the same privileges with respect to criminal jurisdiction, as do diplomatic agents (see above).
 - c. Members of Service Staff – do not receive any immunity privileges.
2. Members of Consular Posts – Consular posts provide a variety of support services for diplomatic missions, however consular personnel are granted only a very limited level of privileges and immunities. Members of Consular Posts include:
- a. Consular Officers—may be arrested pending trial only if the offense is a felony and that the arrest is made pursuant to a decision by a competent judicial authority (e.g., a warrant issued by an appropriate court). They can be prosecuted for misdemeanors, but remain at liberty pending trial or other disposition of charges.
 - b. Consular Employees—enjoy the same rights and privileges as Consular Officers.
 - c. Consular Service Staff—do not enjoy any personal inviolability or jurisdictional immunity of any kind.

B. IDENTIFICATION OF PERSONS ENTITLED TO PRIVILEGES/IMMUNITIES IN THE U.S.

The only authoritative identity document is the identity card issued by the U.S. Department of State, Office of Protocol, or by the U.S. Mission to the United Nations. There are three types of identification cards issued, one each for diplomats, embassy employees, and consular posts.

C. CRIMINAL INVESTIGATION PROCEDURES

- 1. Department members shall keep in mind that such persons, as described above, are official representatives of foreign governments who are to be accorded the maximum degree of respect possible.
- 2. Any investigating member called to the scene of a criminal incident involving a person who claims diplomatic or consular immunity shall verify the status of the suspect. The Department member shall inform the individual that he or she will be detained until his or her identity can be confirmed.
- 3. In all cases, including those in which the suspect provides a U.S. State Department-issued identification card, the investigating member shall detain

the suspect and immediately notify his or her shift commander of the circumstances of the investigation and the identity of the suspect. The shift commander shall then notify the on-duty commanding officer of the CIB, who shall be responsible for contacting the U.S. Department of State, or in the case of the U.N. community, the U.S. Mission to the United Nations to verify the suspect's diplomatic status. (See the U.S. Department of State "Diplomatic and Consular Immunity Manual")

4. Once the status is verified and all pertinent investigative information obtained, the suspect shall be released if he or she enjoys personal inviolability. These individuals cannot be handcuffed, except when he or she poses an immediate threat to safety, and they cannot be arrested or detained.
5. If the investigation reveals that probable cause exists to believe the suspect had committed a felony or violent crime, the on-duty commanding officer of the CIB shall ensure that appropriate personnel are assigned to present the case to the District Attorney's Office for review and consideration of a deportation request to the U.S. Department of State.
6. All investigative reports shall be forwarded through the chain of command to the Office of the Chief for consideration of a deportation request to either the U.S. Department of State in Washington, D.C., or to the U.S. Mission to the U.N. in New York in cases involving the U.N. community.

D. TRAFFIC ENFORCEMENT

1. Stopping a mission member or dependent and issuing a traffic citation for a moving violation does not constitute arrest or detention and is permitted.
2. In OAI cases, the suspect shall be offered the standardized field sobriety test, however, those individuals enjoying personal inviolability privileges cannot be compelled to perform such tests. If the individual is too impaired to continue driving, the Department member shall not permit the individual to drive, but may assist that individual in obtaining transportation.
3. The property of a foreign diplomat enjoying full criminal immunity, including his or her vehicle, may not be searched or seized and such vehicles may not be impounded.
4. Vehicles registered to consulates and/or consular officials, including those with full criminal immunity, are not inviolable and may be towed or impounded. The on-duty shift commander shall be notified in such instances so that he or she may notify the U.S. Department of State-Office of Foreign Missions to follow up with the proper consular official or mission.

130.20 U.S. DEPARTMENT OF STATE RESPONSIBILITIES

- A. The U.S. Department of State will, in all incidents involving persons with immunity from criminal jurisdiction, request a waiver of that immunity from the sending State if the prosecutor advises that, but for such immunity, he or she would prosecute or otherwise pursue the criminal charge.
- B. If the charge is a felony or any crime of violence, and the sending State does not waive immunity, the U.S. Department of State will require that person to depart the United States and not return, but to submit to the jurisdiction of the court with subject matter jurisdiction over the offense.
- C. Upon departure, the Department will request that law enforcement issue a warrant for the person's arrest so that the name will be entered in NCIC.

130.25 RACIAL PROFILING POLICY**A. DEFINITION**

Racial profiling is any police-initiated action that relies upon the race, ethnicity, or national origin of an individual rather than the behavior of that individual, or information that leads the police to a particular individual who has been identified as being engaged in or having been engaged in criminal activity.

B. POLICY

It shall be the policy of the Milwaukee Police Department that police members, during the performance of their duties, shall not engage in the practice of racial profiling. Police members shall not use racial or ethnic stereotypes as factors in selecting whom to stop and whom to search. Police members may use race or ethnicity to determine whether a person matches a specific description of a particular suspect.

130.30 IMMIGRATION ENFORCEMENT**A. POLICY**

It shall be the policy of the Milwaukee Police Department to implement an immigration enforcement strategy that is consistent with the mission of reducing the levels of crime, fear, and disorder in the City of Milwaukee. However, this strategy must also be in balance with the jurisdictional responsibilities of the federal government and the corresponding jurisdictional limitations of local law enforcement. The following procedures not only achieve that balance but also comply with the Wisconsin Attorney General's law enforcement guide to

immigration enforcement.

With a policing philosophy that is community-based, problem-oriented, and data-driven, we are committed to ridding the city's streets of violent offenders regardless of whether such offenders are in the United States legally or illegally. We are also committed to facilitating safe, sustainable communities where citizens are encouraged to report crime and provide the police with useful information and intelligence. However, proactive immigration enforcement by local police is inherently detrimental to our mission and policing philosophy when doing so ultimately deters some citizens from participating in their civic obligation to assist the police. It is therefore expected that each police member follow the procedures set forth below regardless of one's personal opinion or political ideology on the issue of immigration.

- B. Enforcement of the nation's immigration laws is the responsibility of the federal government, particularly the United States Bureau of Immigrations and Customs Enforcement (ICE). Accordingly, the Milwaukee Police Department shall not unilaterally undertake immigration-related investigations and shall not routinely inquire into the immigration status of persons encountered during police operations. This prohibition does not preclude the Department from cooperating with federal immigration officials when requested, or from notifying those officials in serious situations where a potential threat to the public is perceived.

Note: Most immigration violations are civil and fall under the jurisdiction of the federal government. As such, local law enforcement officers have no right of arrest in these matters.

- C. A person's right to file a police report, participate in police-community activities, or otherwise benefit from police services is not contingent upon their immigration status. Consequently, Department members shall not question any person about his or her immigration status unless that person is reasonably believed to be involved in one or more of the activities identified in (F) below.
- D. Department members shall not request passports, visas, "green cards," or other documents relating to one's immigration status in lieu of, or in addition to, standard forms of identification such as a driver's license, state identification card, etc. Immigration related documents shall only be requested when standard forms of identification are unavailable, or when the member is proceeding under (F) below.
- E. Police members shall not contact, detain, or arrest a person solely for a suspected immigration violation unless such contact, detention, or arrest is in cooperation with and at the direction of federal immigration officials.
- F. Police members shall not inform federal immigration officials of the whereabouts or behavior of any suspected illegal immigrant or foreign visitor, except when the immigrant or foreign visitor:

1. Is arrested for a felony
 2. Is arrested for a misdemeanor involving the possession or use of a dangerous weapon
 3. Is arrested for a terrorism-related offense, or is otherwise reasonably suspected of involvement in terrorism and/or subversive activities
 4. Is arrested for any offense involving the entry or fraudulent assimilation of undocumented foreigners into the country, or is reasonably suspected of participating in an organized venture to bring or fraudulently assimilate undocumented foreigners into the country
 5. Is a previously deported felon
 6. Is reasonably suspected of participating in criminal street gang activity
- G. In the event a police member needs to contact ICE, [REDACTED]
[REDACTED] If the local office is closed or if an agent is unavailable, the police member shall contact the ICE Law Enforcement Support Center (LESC) at [REDACTED]
- H. Only federal immigration officials can determine a person's immigration status; therefore, citizens wishing to report immigration violations shall be referred to the local office of ICE at [REDACTED]



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